

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Black Crow Radio, LLC)	File Number: EB-07-TP-247
Licensee of AM Broadcast Station WNDB)	
Daytona Beach, FL)	NAL/Acct. No.: 200832700018
Facility ID 10342)	
)	FRN: 0005816590

FORFEITURE ORDER

Adopted: November 13, 2008

Released: November 17, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of six thousand four hundred dollars (\$6,400) to Black Crow Radio, LLC, ("Black Crow"), licensee of AM Broadcast Station WNDB, in Daytona Beach, Florida, for willful and repeated violation of Sections 73.44(b) and 73.49 of the Commission's Rules ("Rules").¹ The noted violations involve Black Crow's failure to ensure that emissions removed by 60 kHz to 75 kHz from the WNDB fundamental frequency of 1150 kHz are attenuated 65 dB below the unmodulated carrier level and failure to maintain effective locked fences around the bases of two antenna towers.

II. BACKGROUND

2. On February 26, 2008, in response to a complaint that AM station WNDB was causing interference to stations on 1070 KHz and 1230 KHz and general interference up and down the AM band, agents from the Commission's Tampa Office of the Enforcement Bureau ("Tampa Office") monitored station WNDB on its licensed frequency of 1150 KHz with a standard car radio and readily observed that the station could be heard up and down the AM band. The agents also heard station WNDB intermittently on stations 1070 KHz and 1230 KHz. The agents measured the spurious emissions with a calibrated spectrum analyzer and loop antenna and determined that WNDB was attenuated 33 dB at +/- 60 KHz referenced to the WNDB carrier on 1150 kHz.

3. Still on February 26, 2008, agents from the Tampa Office inspected the main studio of station WNDB. The agents informed the station of the harmful interference they were causing and advised that they would need to correct the problem or shut down within three hours.² The inspection continued at the transmitter site where the agents observed that the station's two AM antenna series fed towers were not enclosed within effective locked fences. One tower fence did not have a locking

¹ 47 C.F.R. §§ 73.44(b), 73.49. We also find that Black Crow willfully and repeatedly violated Sections 11.35(a) and 73.3526 of the Rules. Black Crow made a payment of \$12,000 for these violations, and are not at issue in this *Forfeiture Order*.

² See 47 C.F.R. § 73.1350(d) (if not in compliance with the technical rules or the station authorization, and the condition is not listed in Section 73.1350(e) of the Rules, broadcast operation must be terminated within three hours).

mechanism, and the other tower fence had a broken locking mechanism. The property's perimeter fence gate was open and lying down beside the driveway. The station's chief engineer stated the perimeter fence gate had been pushed down for about two weeks. The station's chief engineer also stated that the station would fix the two base fences right away. Because the station's chief engineer turned the station transmitter off and on and made some other adjustments during the inspection, the agents took another brief measurement after the inspection. The agents informed the chief engineer that the spurious emission problem remained and reminded him that the problem had to be fixed within 3 hours or the station would have to cease transmitting.

4. On February 28, 2008, agents from the Tampa Office returned to the Daytona Beach area and monitored AM Broadcast Station WNDB with a standard car radio. They again observed that the station could be heard up and down the AM band, but to a lesser degree than before. The agents also heard station WNDB intermittently on stations 1070 KHz and 1230 KHz. The agents measured the spurious emissions with a calibrated spectrum analyzer and loop antenna and determined that WNDB was attenuated 41 dB at +/- 60 KHz referenced to the WNDB carrier on 1150 kHz. The agents also observed that the fences surrounding the station's two AM towers were in the same condition as on February 26, 2008. The agents also observed that the perimeter property fence gate still remained open and lying on the ground.

5. On September 24, 2008, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Black Crow in the amount of twenty-three thousand dollars (\$23,000) for the apparent willful and repeated violation of Sections 11.35(a), 73.44(b), 73.49 and 73.3526 of the Rules.³ In response to the *NAL*, Black Crow admitted that it violated Sections 11.35(a) and 73.3526 of the Rules and submitted a payment in the amount of \$12,000 for those violations. Black Crow, however, requested cancellation or reduction of the remaining \$11,000 proposed forfeiture.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Black Crow's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

7. Section 73.44(a) of the Rules requires that "[t]he emissions of stations in the AM service shall be attenuated in accordance with the requirements specified in paragraph (b) of this section."⁷ Section 73.44(b) of the Rules requires that "[e]missions removed by 60 to 75 kHz (from the carrier) must be attenuated at least 65 dB below the unmodulated carrier level."⁸ On February 26 and 28, 2008, agents from the Tampa Office observed emissions removed by 60 kHz to 75 kHz from WNDB's carrier that

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832700018 (Enf. Bur., Tampa Office, September 24, 2008) ("*NAL*").

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ 47 C.F.R. § 73.44(a).

⁸ 47 C.F.R. § 73.44(b).

were attenuated by only 33 dB and 41 dB, respectively. On February 26, 2008, agents from the Tampa Office twice told the station to correct the spurious emissions problem or else cease broadcasting. Black Crow does not dispute that it was the source of spurious emissions on February 26 and 28, 2008. Thus, based on the evidence before us, we find that Black Crow willfully⁹ and repeatedly¹⁰ violated Section 73.44(a) of the Rules by transmitting unauthorized emissions on February 26, 27, and 28, 2008.

8. Although Black Crow does not dispute the underlying facts of the violation, it, nevertheless, requests cancellation or reduction of the proposed forfeiture. Black Crow states that it does not have the necessary equipment to detect spurious emissions and relies on annual measurements and inspections by its consulting engineering firm to ensure compliance with Section 73.44(a) of the Rules. Black Crow states that the station was last inspected in September 2007 and was not causing spurious emissions at that time. Black Crow claims that vandals may have damaged their transmission equipment, thus creating the spurious emissions problem. Black Crow also claims that it reduced power on February 27, 2008 and was unaware that the reduction in power had not solved the spurious emissions problem. Finally, Black Crow asserts that it contacted the manufacturer of its transmitter on February 26, 2008, ordered new parts on February 27, 2008, and repaired the transmitter late on February 28, 2008, after the agents' second observation.

9. We find that Black Crow has failed to raise any arguments that would warrant reduction or cancellation of the proposed forfeiture. Black Crow was required to cease operations on February 26, 2008 and remain off the air until it corrected the violation. In other words, Black Crow should not have resumed operations until it could confirm that the problem had been remedied. Although reducing power was a reasonable precaution, without taking measurements, Black Crow had no way of knowing whether it was continuing to emit spurious emissions in violation of Section 73.44(a) of the Rules and, therefore, should not have resumed operations. In addition, although Black Crow claims it did not have the necessary equipment to detect spurious emissions, it could have monitored the AM band with a normal receiver and determined that the station still could be heard up and down the band, thus proving the problem had not been resolved by its reduction in power. Finally, Black Crow's post-inspection corrective action taken to come into compliance with the Rules was expected, and does not nullify or mitigate any prior forfeitures or violations.¹¹

10. Section 73.49 of the Rules¹² requires antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) to be enclosed within effective locked fences or other enclosures. Individual tower fences need not be installed if the towers are contained within a protective property fence. On February 26 and 28, 2008, agents from the Tampa Office observed that both AM antenna series fed towers were not enclosed within effective locked fences and were the type of antennas which have radio frequency potential at their base. One of the tower fences had no locking mechanism, and the other had a broken locking mechanism, thus providing ready access to the

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹¹ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹² 47 C.F.R. § 73.49.

base of the towers. In addition, the property's perimeter fence gate was open and lying on the ground. The station was aware that the perimeter gate had been broken for about two weeks prior to the inspection and was reminded of the base fence problems on February 26, 2008. Black Crow does not dispute any of these facts. Thus, based on the evidence before us, we find that Black Crow willfully and repeatedly violated Section 73.49 of the Rules by failing to enclose its AM towers within effective locked fences or other enclosures on February 26 and 28, 2008.

11. Although Black Crow does not dispute the facts underlying the violation, it, nevertheless, requests cancellation or reduction of the proposed forfeiture. Black Crow asserts its property has been plagued by vandals and provided one police report filed prior to the inspection and several reports filed after the inspection as evidence of the problem. It states that it replaced the fence in November 2007. It also claims that the fence was vandalized "just prior to the FCC inspection," it had been evaluating solutions to the vandalism problem but had not repaired the fence prior to the inspection, it ordered parts for the fence on February 27, 2008, and it had the fence repaired by February 29, 2008.

12. We find that Black Crow has failed to provide evidence which would cause us to reduce or cancel the proposed forfeiture. Although vandals may have damaged the base or perimeter property fences, according to the station's chief engineer, the perimeter gate had been broken for about two weeks prior to the inspection. Given that Black Crow was able to repair the fence within two days after the inspection, it had ample time prior to the inspection in which to repair the fence after it first became aware of the damage. While Black Crow asserts it was considering more elaborate efforts to address the vandalism problem, such as motion detecting lights, alarms and fence supports, prior to the inspection, consideration of these additional measures did not prevent Black Crow from addressing the immediate needs of the existing fence. Furthermore, it is well established that post-inspection corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹³ Similarly, although Black Crow replaced the fence in November 2007, due to damage caused by vandals, such action was presumably necessary to correct a prior fencing violation and does not excuse Black Crow from continuing compliance with the Rules.

13. Finally, Black Crow requests a reduction of the proposed forfeiture, because it claims it has never been charged by the Commission with a violation since it began operating thirteen years ago. We have reviewed the record and reduce the forfeiture to \$6,400 based on Black Crow's history of compliance with the Rules.

14. We have examined Black Crow's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that a reduction of the proposed forfeiture to \$6,400 is warranted, based on Black Crow's history of compliance with the Rules.

III. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Black Crow Radio, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand four hundred dollars (\$6,400) for violation of Sections 73.44(a) and 73.49 of the Rules.¹⁴

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

¹³ See *supra* note 11.

¹⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.44(a), 73.49.

Act.¹⁵ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Black Crow will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Black Crow Radio, LLC at its address of record and to its counsel, David G. O’Neil, Rini Coran PC, 1615 L Street NW, Suite 1325, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹⁵ 47 U.S.C. § 504(a).